INDEX

Page

Petition for Writ of Certiorari 7
Summary and Contents of Brief 6A
Statement 7

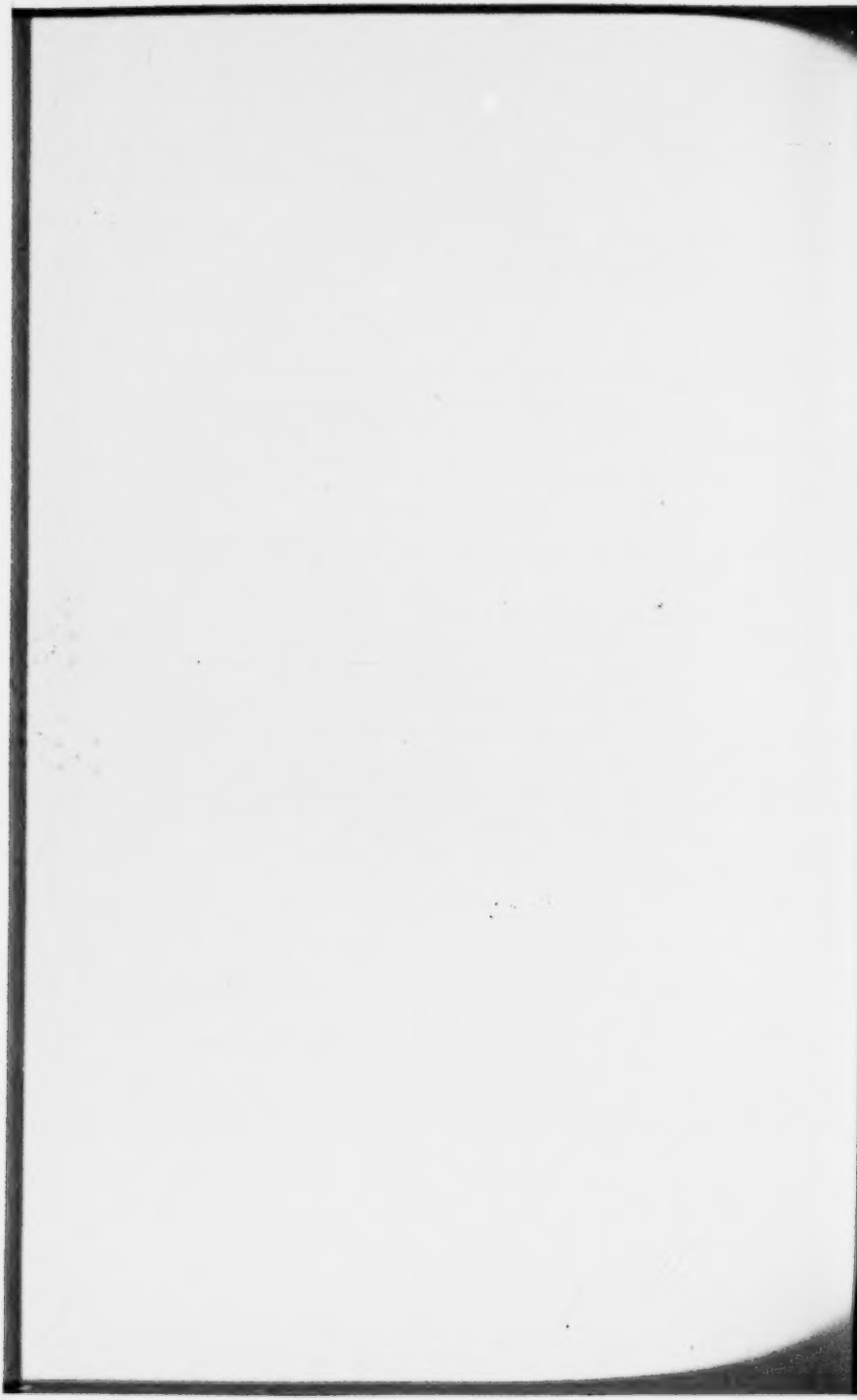
Argument:

I. Judgment of United States Court of Appeals for the Fourth Circuit Constitutes Important Question of Federal Law Which Has Not Been but Should Be Settled by the Supreme Court of the United States 11

II. The United States Court of Appeals for the Fourth Circuit Erred in Permitting Recovery on Voyages Prior to the Last Voyage 11
A. Duration of Engagement 12
B. Bad Faith or Fraud as Grounds for Setting Aside 12
C. Amounts of Advances to Be Reduced by Taxes 16
D. Construction of Word "Advances" 16
E. Claims of Libellant, Sardis 17
F. Strict Construction of Statute 17

Table of Cases

The GEORGE B. FERGUSON (D. C. Me., 1905), 140 Fed. 955, 957 15
The JUNEAU (E. D. La., 1926), 11 Fed. (2d) 430 15
The SAMUEL F. SPRING, 27 Fed. 764 15
The STANDARD (2nd Cir.), 103 F. (2d) 437, 439 15



Supreme Court of the United States

OCTOBER TERM, 1949.

No. ....

PETROS MALEURIS, CHRISTOS KAKOULIDIS, ATHANASIOS SARDIS, DIDNSIOS MBITROS, ZEPOS VORDONIS, KOST RAMFOS, EFSTRAZTIOS KORTESIS, DIMITRIOS KALOGERAS, DIMITRIOS ASPROGERAKAS, NICKOS SKIAFOS,

versus

ANTHONY G. PAPADAKIS, AS OWNER, MICHAEL PILIAROS, HIS AGENT, LEONARDOS CAPPARIS, AS MASTER, ALL BEING INTERESTED IN THE OPERATION OF THE STEAMSHIP VIRGINIA.

On Application for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Cross-Petition.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The cross-petition of Anthony G. Papadakis, owner, and Leonardos Capparis, master, of the steamship VIRGINIA, hereinafter sometimes called respondents, respectfully shows to this Honorable Court as follows:

1. The above entitled cause was a suit in the District Court of the United States for the Eastern District of Virginia, at Norfolk, against the cross-petitioners, Anthony G. Papadakis, owner, Michael Piliaros, his agent, and Leonardos Capparis, master of the Greek steamship VIRGINIA; Commander Michael O. Piliaros, Greek Port Captain, was the representative of the Marine Department of the General Royal Consulate of Greece, whose office is located in New York City. It was held both in the United States District Court for the Eastern District of Virginia, and in the United States Court of Appeals for the Fourth Circuit that the suit against Michael O. Piliaros is without foundation, and as to him the case was dismissed.

2. The libellants in this case were 10 Greek seamen who sought to recover wages, bonuses, indemnities and repatriation under the Greek Law. Both the libellants and the respondents are citizens and nationals of the Kingdom of Greece. The libellants were employed aboard the steamship VIRGINIA at various ports during the years 1947 and 1948. Subsequent to their employment, and on January 15, 1948, the libellants as members of the crew of the steamship VIRGINIA commenced a round trip aboard the said steamship from Newport News, Virginia, to France and Africa, returning to Newport News on or about March 15, 1948.

Because of certain acts of the libellants during this round voyage, on return of the vessel to Newport News, Virginia, the master of the steamship appealed to the Chief of the Marine Department of the General Royal Consulate of Greece, whose office is located in New York, to conduct an investigation concerning the actions of the libellants and determine whether or not, under the Greek law, their said actions would justify their discharge from the vessel. Commander Michael O. Piliaros, Greek Port Captain, was sent to Newport News, where he boarded the steamship VIRGINIA on March 25, 1948, and conducted an investigation. On the basis of the investigation which he conducted,

all of the libellants, with the exception of Petros Maleuris, were ordered discharged "with cause".

It was ordered that the libellant, Petros Maleuris, should receive 40 days wages as an indemnity for discharge "without cause".

3. Upon publication of the order of Michael Piliaros, and tender of wages due, plus overtime, the libellants refused to leave the steamship VIRGINIA. As a result of the refusal on the part of the libellants to leave the vessel, a possessory libel was filed by the owner of the steamship VIRGINIA. Upon the institution of this possessory libel and partial hearing thereof the libellants agreed to leave the vessel. It was unnecessary for the United States District Court to enter a final adjudication on the merits in the possessory libel action. In the possessory libel action deposit was made into Court of the wages tendered to the libellants and refused by them, as well as the 40 days wages due Petros Maleuris as an indemnity for discharge without cause. The amount of the deposit in Court totalled $1,488.70. Upon application by libellants and by order of the United States District Court the appropriate sums were paid to the libellants.

In the possessory libel action the libellants filed a motion claiming the sum of $3,550.00 as advances made to them contrary to the provisions of Title 46, U. S. C. A., Sec. 599. On May 21, 1948, this amount was deposited in court by respondents without prejudice.

4. On April 2, 1948, the libellants filed their libel, in which the following claims were made:

a. Bonus for six months' service, $80.00 each.

b. Extra pay for removing hatch covers, etc. $100.00.

c. Conspiracy to discharge, $1,000.00 each.

d. Four months' pay, plus the cost of transportation back to Greece under Article 361 of the Greek Commercial Code.

e. Respondents "plan to make" derogatory entries in libellant's seamen's books, $1,000.00 each.

f. Respondent's "plan to withhold" seamen's books, $1,000.00 each (Resp. App. 44-46).

On the day of the trial of this case in the United States District Court, the libellants filed a supplementary libel, in which the following claims were made:

a. The libellant seamen were compelled to leave the vessel and were arrested by United States Immigration Authorities, $1,000.00 each.

b. The respondent, Piliaros, Greek Port Captain, made derogatory entries in libellants' seamen's books, $1,000.00.

c. The libellant, Nickos, Skiafos, became ill as a result of his service aboard the steamship VIRGINIA, and the respondents failed to furnish proper medical care, maintenance, cure, etc., $1,500.00.

d. The libellant, Christos Kakoulidis, became ill as a result of his service aboard the steamship VIRGINIA, and the respondents failed to furnish proper medical care, maintenance, cure, etc., $2,000.00 (Resp. App. 46-47).

In neither the original nor the supplementary libel were claims asserted for advances.

5. On July 15, 1948, memorandum was filed by the Judge of the United States District Court for the Eastern District of Virginia, in which all of the various claims made by the libellants were denied, with the exception of advances made to the libellants during the last voyage of the vessel. The evidence disclosed that the amount of the advances to the libellants on the last voyage totalled $1,650.00.

6. From this decision of the United States District Court the libellants appealed to the United States Court of Appeals for the Fourth Circuit, which Court decided that the appellants, libellants, were entitled to recover the

total amount of the advances made to the libellants by the respondents during the entire period of their employment aboard the steamship VIRGINIA. In every other respect the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court, 175 F. (2d) 730.

7. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254, paragraph (1). The judgment of the United States Court of Appeals for the Fourth Circuit was entered May 17, 1949. Petition for rehearing was denied July 21, 1949 (175 Fed. (2d) 734). The mandate was stayed pending filing of petition for writ of *certiorari*. This cross-petition for writ of *certiorari* is filed October ...., 1949.

8. The sole question presented by this cross-petition is as follows:

> "Are the libellant Greek alien seamen entitled to recover advances paid contrary to Title 46 U. S. C. A., Section 599, on voyages prior to the last voyage during which they were employed aboard a Greek vessel?"

9. The reasons relied on for the allowance of the writ are that the judgment of the Court of Appeals for the Fourth Circuit constitutes a decision of an important question of Federal law which has not been, but should be, settled by the Supreme Court of the United States, and that the United States Court of Appeals for the Fourth Circuit has decided a Federal question in a way probably in conflict with the applicable decisions of this Court.

Wherefore, upon due consideration of this cross-petition and the annexed brief and the certified copies of the record of the United States Court of Appeals for the Fourth Circuit filed herewith, respondents and cross-petitioners respectfully pray that a writ of *certiorari* be issued under the seal of this Court directed to the United States Court of Appeals for the Fourth Circuit commanding that

Court to certify and send to this Court a full and complete transcript of the record of all proceedings had in this cause to the end that the same may be reviewed and determined by this Honorable Court. And the petitioners pray that upon the final consideration of this cause the said judgment of the Circuit Court of Appeals, insofar as the same deals with the question of advances on voyages prior to the last voyage, be reversed by this Honorable Court, that the judgment of the United States District Court be affirmed, and judgment rendered in favor of the respondents.

Cross-Petitioners further pray for such other, equitable and general relief as may appertain to this case and as may be competent for this Honorable Court to grant.

LEON T. SEAWELL,
Counsel for Cross-Petitioners.

State of Virginia,
City of Norfolk, to-wit:

Before me, the undersigned notary public, personally appeared Leon T. Seawell, who being duly, sworn, deposes and says that he is a member of the Bar of the Supreme Court of the United States, and is of counsel for cross-petitioners herein; that he has read the foregoing application for a writ of *certiorari;* and that all the facts therein stated are true and correct to the best of his knowledge and belief.

LEON T. SEAWELL.

Subscribed and sworn to before me this 13th day of October, 1949.

ANNA M. BRAITHWAITE,
Notary Public.

My comm. expires 7/13/51.

SUMMARY AND CONTENTS OF BRIEF

I. The Judgment of the United States Court of Appeals for the Fourth Circuit Constitutes a Decision on an Important Question of Federal Law Which has Not Been, but Should Be, Settled by this Court.

II. The United States Court of Appeals for the Fourth Circuit Erred in Allowing the Libellants, Sardis, Ramfos, Asprogerakas and Vordonis to Recover Advances Made Prior to the Last Voyage for the Following Reasons:

A. The Duration of Engagement of Greek Seamen is One Round Voyage and the Accounts of the Libellants Were Settled on that Basis. There Was No Indication of Bad Faith in the Settlement of the Accounts in Question.

B. In the Absence of Bad Faith or Fraud the Settlement of Accounts Between the Libellants and the Respondents Should Not Be Set Aside.

C. The Amounts Claimed as Advances by the Four Libellants on Voyages Prior to January 15, 1948, Must Be Reduced by the Amount of Taxes Which the Respondents are Obligated, Under the Greek Law, to Deduct from the Libellants' Earnings.

D. The Mere Fact that the Word "Advances" Appears in the Pay Accounts of the Four Libellants Does Not Necessarily Mean that the Money Paid Was an Advance on Wages to be Earned in the Future. It is Only to Such Payments that Our Statute Applies. The Libellants Must Show by the Evidence that the Amounts were Paid in Advance of the Time When They Were Earned.

E. The Claim Asserted by the Libellant, Sardis, to an Advance in November, 1947, is Not Supported by the Evidence.

F. Title 46 U. S. C. A., Sec. 599, Prohibiting Advances Must be Strictly Construed. Such a Strict Construction Necessitates the View that Any Amount Due a Seaman as Wages, at a Time When a Payment of Money is Made to Such Seaman, Will Not Be Considered an Advance. The Amount Due the Seaman Will be Deducted from the Total Payment so as to Make the Actual Advance on Future Earnings the Difference Between the Amount Due and the Amount Paid.

Supreme Court of the United States

OCTOBER TERM, 1949.

No. ....

PETROS MALEURIS, CHRISTOS KAKOULIDIS, ATHANASIOS SARDIS, DIDNSIOS MBITROS, ZEPOS VORDONIS, KOST RAMFOS, EFSTRAZTIOS KORTESIS, DIMITRIOS KALOGERAS, DIMITRIOS ASPROGERAKAS, NICKOS SKIAFOS,

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On Application for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

Brief in Support of Cross-Petition for Writ of Certiorari.

STATEMENT.

The Appellate Court found on appeal that the libellants were entitled to recover advances made prior to the

last voyage on which they were employed aboard the steamship VIRGINIA, and in this respect the decree of the District Court of the United States for the Eastern District of Virginia was reversed.

The amount of advances made on the last voyage during which the libellants were aboard the steamship VIRGINIA was $1,650.00. This amount has been paid by the respondents to the respective parties claiming the same.

It is conceded by all parties that only four of the libellants are involved in any claim for advances prior to January 15, 1948, the date of the beginning of the last round voyage on which the libellants were aboard the ship. These four men are Sardis, Ramfos, Asprogerakas, and Vordonis. The total of their claims for voyages prior to January 15, 1948, according to their brief is $1,880.66, without considering the right of the respondents to deduct taxes from the amounts earned by the libellants (Libellants App. Note 5).

The voyages on which the four libellants claim advances date back to August, 1947, eight months prior to the time when the libellants filed suit in the District Court of the United States against the respondents. Neither in their original nor their supplemental libel did the libellants make any claim for advances under Title 46, U. S. C. A., Sec. 599 (Resp. App. 43-47).

Under the Greek Collective Agreement of September 2, 1943, the round voyage is the unit of time for which Greek seamen are employed (Resp. App. 65). The wage accounts produced by the four libellants show a settlement of accounts at the conclusion of each round voyage. There is not the slightest showing of any unfair dealing in the settlement of the accounts between the libellants and the respondents. The four libellants in each case accepted the account as a proper settlement of the amount due for their services, and re-shipped for another voyage.

The statute under consideration in this case is known as Title 46, U. S. C. A., Section 599, and provides as follow:

"ADVANCES AND ALLOTMENTS:

(a) It shall be unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

(b) It shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grand-parents, parents, wife, sister, or children, or for deposits to be made in an account opened by him and maintained in his name either at a savings bank or a United States postal savings depository subject to the governing regulations thereof.

(c) No allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations

for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made, or by directing the payments to be made to a savings bank or a United States postal savings depository in an account maintained in his name.

(d) No allotment except as provided in this section shall be legal. Any person who shall falsely claim to be such relation; as above described, or to be a savings bank or a United States postal savings depository and as such an allottee of the seaman under this section shall for every such offense be punished by a fine not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

(e) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) Under the direction of the Secretary of Commerce the Director of the Bureau of Marine Inspection and Navigation shall make regulations to carry out this section. This section shall not apply to fishing or whaling vessels or yachts. * * *."

ARGUMENT.

I. THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CONSTITUTES A DECISION ON AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT.

By way of background we desire to call attention to the fact that a large percentage of the exports from the United States of America to foreign ports is carried in ships owned by citizens of Greece. The Appellate decision which we now seek to have reviewed would not only disrupt the operation of these Greek vessels, but would have the effect of creating an economic hardship which could probably not be borne by the various Greek owners engaged in the shipping business.

Since the decision handed down by the United States Court of Appeals for the Fourth Circuit on May 17, 1948, the owners of the Greek vessels have been beseiged by numerous demands of Greek seamen for the payment of advances which they claim have been paid to them during the time that they served aboard the various Greek vessels. Some of the claims are years old. The Greek owners, relying on the Greek customs and law requiring advances, have, in good faith, complied over the years with the demands of the Greek seamen to pay the same. The numerous demands at this time leave the owners and operators of Greek vessels completely at the mercy of seamen who, after demanding and accepting the advances, now choose to claim that the same were paid in violation of the laws of the United States and consequently that they are entitled to be paid a second time for their services.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN ALLOWING THE LIBELLANTS, SARDIS, RAMFOS, ASPROGERAKAS AND VORDONIS TO RECOVER ADVANCES MADE PRIOR TO THE LAST VOYAGE.

This argument is limited to (1) a brief discussion of the errors or oversights which were committed in the

United States Court of Apepals for the Fourth Circuit, and (2) the reasons why advances prior to the last voyage should not be allowed.

A. *The Duration of Engagement of Greek Seamen is One Round Voyage and the Accounts of the Libellants Were Settled on That Basis. There Was no Indication of Bad Faith in the Settlement of the Accounts in question.*

Clause C of the Collective Agreement under the heading "Duration of Engagement" provides as follows:

> "Seamen will sign on for a full round voyage (e. g., from and back to the United Kingdom) * * *" (Resp. App. 65).

The accounts produced by the libellants show that pay periods were divided into voyages of approximately one month's duration. The accounts were settled at the completion of each voyage and were accepted by both the libellants and respondents in good faith as the fair and just and full compensation to be paid by the respondents to the libellants for their services (Libellants App. Note 5). This good faith payment clearly constitutes an account settled.

There has been no showing of bad faith by the evidence. In the words of the District Court:

> "In the instant case there is not the slightest intimation of overreaching or unfair dealing in the settlement of the wage accounts, including the advances charged." 1948 AMC 1721, 1725 (Resp. App. 54).

B. *In the Absence of Bad Faith or Fraud the Settlement of Accounts Between the Libellants and the Respondents Should Not be Set Aside.*

The Appellate Court in its opinion of May 17, 1949, stated:

> "It is clear that advances made in violation of this section may not be credited against wages due the seamen for the voyage. *Lakos* v. *Saliaris, supra,* 4 Cir., 116 F. (2d) 440. And it seems equally clear that 'good cause' for setting aside a wage settlement or even a release given by a seaman in a settlement for wages, as provided by 46 U. S. C. A. 597, is that the settlement does not include the full amount due after the advances forbidden by statute are eliminated." 175 Fed. (2d) 730, 733.

The Court of Appeals based its action in setting aside a settled account on the ground that "good cause" for setting aside was shown by the appearance of the word "advances" in the wage accounts of the four libellants. It is respectfully submitted that the setting aside of a release must be based on fraud or unfair dealing, neither of which exists in this case. The four libellants made no complaint at the time of the settlement of their account. Nor did they complain in their testimony and evidence which was produced at the trial of this case. It is significant to note that their testimony shows they demanded the advances which were given to them. They insisted on their rights to advances under the Greek law (See excerpts from testimony of libellants Vordonis and Asprogerakas, Respondents App. 111, 112).

Not even in the original or supplemental libel did they make demands for such advances. The only pleading which claimed such advances was a motion filed in the possessory libel suit which was signed by proctors and not by the libellants themselves (Resp. App. 48).

Clause P of the Collective Agreement of September, 1943, under heading "Advances, when pay starts, payment of wages" provides a regular schedule of advances (Resp. App. 66). The Circuit Court of Appeals had the following to say concerning this point:

> "The fact that wages of prior voyages were not specifically claimed in the libels originally filed is not sufficient ground for denying this relief. The matter was fully considered by the Court below; and an amend-

ment of the pleadings should have been allowed if deemed necessary. Seamen are wards of the admiralty and are not to be denied, on technical grounds of pleading, relief to which they are entitled." 175 F. (2d) 730, 733.

But at no time in this suit did the libellants seek to amend their pleadings.

Thus under the time honored principle that "Seamen are the wards of the Admiralty" the Appellate Court set aside the judgment of the lower Court and permitted recovery on sums paid to the libellants on remote voyages when (1) no demand was made by the libellants themselves except through motion filed in the possessory libel suit signed by proctors; (2) the settlement of each account had been made and was accepted by both libellants and respondents; and (3) the agreement under which the advances were made was for the sole benefit of the libellants themselves and at their insistence and demand.

In this connection it is interesting to note that the libellants were within the jurisdiction when the motion was made in the possessory libel suit and were available to sign all pleadings. The motion referred to was filed on April 2, 1948. Testimony and depositions were being taken in the case from April 1st through April 10th, in the City of Newport News, Virginia.

Title 46 U. S. C., Section 599 was passed for the benefit of seamen to prevent an abuse which then existed, but which has long been eliminated. These elements of abuse do not now exist and, in fact, the seamen for whose benefit this law was passed were themselves demanding the amounts so paid.

It is further interesting to note that there is at the present time a suit pending in the District Court of the United States for the Eastern District of Virginia instituted by Nicholas Korthinos and sixteen other Greek seamen against the same respondents and the steamship VIRGINIA in which certain claims are made under the Collective Agreement of September 2nd, 1943, for damages for

failure to employ the said Greek seamen upon their application. The information developed from Leonardos Capparis, master of the VIRGINIA reveals that the Greek seamen who requested employment aboard the vessel demanded advances before they would accept employment.

In this connection another interesting question arises:

Can the seamen themselves initiate the proceeding by demanding certain advances and then complain of the owners' or masters' action in complying with their demand? If it is a violation of the statute, can the seamen force their demands for advances as a pre-requisite for work and then claim the benefit of the statute? Are they not just as guilty in such an infraction as the owner or master and are they not deprived now of claiming any benefit?

To grant them payment of such advances is to allow the seamen to profit by their own wrongdoing. Which would be another example of the misapplication of the old principle of "wards of the admiralty". Masters of vessels may not be "wards of the admiralty", but they certainly have some protection from the courts in such matters.

Assuming for the sake of argument that the seamen has a right under the statute, is there anywhere any prohibition against his settling and releasing that right? Is he not at liberty, provided of course no fraud is practiced, to enter into whatever agreement may be fair for the settlement and satisfaction of that right? No argument can be advanced in this case other than that the men have been fairly and equitably dealt with and the very fact that the claims are for advances on prior voyages establishes our position.

Under the circumstances the settled accounts should not be set aside.

The JUNEAU (E. D. La., 1926), 11 Fed. (2d) 430.

The George B. FERGUSON (D. C. Me., 1905), 140 F. 955, 957.

The SAMUEL F. SPRING, 27 F. 764.

The STANDARD (2d Cir.), 103 F. (2d) 437, 439.

C. *The Amounts Claimed as Advances by the Four Libellants on Voyages Prior to January 15, 1948, Must Be Reduced by the Amount of Taxes Which the Respondents Are Obligated, Under the Greek Law, to Deduct From the Libellants' Earnings.*

The decision of the Court of Appeals on May 17, 1949, did not provide that the respondents were entitled to deduct taxes. Referring to the accounts under note 5 of the appendix of the libellants' brief, the amounts listed as "Holdings" represent the taxes deducted at the completion of each round voyage, or when the account was settled. The provision for such deduction, under the Greek law, is similar to the various American withholding tax laws, and it appears clearly that the respondents would be entitled to deduct the amounts of the taxes from the sums which the libellants allege are due them because of advances on the various voyages prior to January 15, 1948.

D. *The Mere Fact That the Word "Advances" Appears in the Pay Accounts of the Four Libellants Does Not Necessarily Mean That the Money Paid Was in Advance on Wages to Be Earned in the Future. It Is Only to Such Payments That Our Statute Applies. The Libellants Must Show by the Evidence That the Amounts Were Paid in Advance of the Time When They Were Earned.*

It is well settled that only advances on future earnings are recoverable. The burden of proof applying to every litigant asserting a claim in the courts of the United States applies to Greek litigants as forcefully as to American citizens. Even if it is conceded, for the purpose of argument, that the libellants are entitled to recover any advances which they prove, the evidence must show unequivocally that the amounts claimed by the libellants were actual advances on future earnings and that the word "advances" was not a mere characterization. In the numerous Greek cases which have been instituted in both the State and Fed-

eral Courts it is established that the word "advances" as used in Greek accounts means any payment of money made by the master of a vessel to the seamen—not only payments of wages to be earned in the future, but also payments of wages which have already been earned at the time of the payment.

E. *The Claim Asserted by the Libellant, Sardis, to An Advance in November, 1947, Is Not Supported by the Evidence.*

Considering the evidence in this case, no claim for such an advance is supported.

At page 112 of the appendix of respondents' brief excerpts from the testimony of Sardis are printed. The libellant, Sardis, states that there was no advance for the November-December settlement of account.

F. *Title 46, U. S. C. A., Section 599, Prohibiting Advances Must Be Strictly Construed. Such a Strict Construction Necessitates the View That Any Amount Due a Seamen as Wages, at a Time when a Payment of Money Is Made to Such Seamen, Will Not Be Considered an Advance. The Amount Due the Seaman Will Be Deducted From the Total Payment So as to Make the Actual Advance on Future Earnings the Difference Between the Amount Due and the Amount Paid.*

The principle of law requiring a strict construction of Federal Statutes is supported by cases too numerous to cite.

From the language of Title 46, U. S. C. A., Sec. 599, it appears clearly that if there is existing at the time of the payment any amount due for wages, then the amount so due is not an advance.

The libellants in this case claim that at the conclusion of a certain voyage ending August 31, 1947, they received a settlement of account. Varying sums were shown by the account to be "advances." Thus, at the conclusion of the first voyage, if the libellants are entitled to go back of that settle-

ment of account, there remained owing to them and due them after the said settlement the amount which they claimed as an advance—this amount they claim as wages. Thus, when the second advance was made during the following voyage ending September, 1947, there was at that time due and owing the libellant the amount of the advance which he claimed from the previous voyage. The second advance would, therefore, be made at a time when there were wages due and owing the seamen. Under a strict construction of the statute the second advance must be reduced by the amount due and owing at the time the same was made.

CONCLUSION.

For the reasons set out herein it is submitted that the question decided by the United States Court of Appeals constitutes a decision on a vitally important and troublesome question of Federal law which has not been, but should be, settled once and for all by this Court. The Court of Appeals erred in its decision as to advances on voyages prior to the current voyage in that it (1) failed to recognize a *bona fide* settlement of account between the parties, and (2) failed to follow the rule requiring strict construction of the appropriate United States Statute.

Respectfully submitted,

LEON T. SEAWELL,
THOMAS M. JOHNSTON,
Counsel for Petitioners.